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# SUPREME COURT OF THE UNITED STATES.

## No. 98.

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## JOSÉ MARIA FUENTES, APPELLANT,

v.

## THE UNITED STATES.

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**APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.**

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GIDEON, Print.

OFFICE OF THE BOARD OF COMMISSIONERS
*To ascertain and settle the private land claims in the State of Cal'a.*

Be it remembered, that on this eighteenth day of December, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of José Maria Fuentes for the place named "Potrero" was presented and ordered to be filed and docketed with No. 496, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December 28th*, 1852.

In case No. 496, José Maria Fuentes, the deposition of Ramon de Zaldo, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 5 of this Transcript.)

In the same case, the deposition of José Abrego, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T. No. 1, was filed.

(Vide page 7 of this Transcript.)

SAN FRANCISCO, *December 29th*, 1852.

In the same case, the deposition of Joseph L. Folsom, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 8 of this Transcript.)

SAN FRANCISCO, *February 25th*, 1853.

In the same case, the deposition of Manuel Castro, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 10 of this Transcript.)

SAN FRANCISCO, *October 10th*, 1854.

Case No. 496, on motion of the counsel for the claimant, with the consent of the U. S. law agent, was ordered to be placed at the foot of the 2d class cases on the trial docket.

SAN FRANCISCO, *November* 21*st*, 1854.

Case No. 496 was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *November* 21*st*, 1854.

In the same case, Commissioner S. B. Farwell delivered the opinion of the board rejecting the claim.

(Vide page 19 of this Transcript.)

And the following order was made, to wit:

(Vide page 20 of this Transcript.)

*Petition.*

STATE OF CALIFORNIA, *ss.*

To the honorable the Board of Commissioners of the United States for the adjudication of private land claims in the State of California.

The petition of José Maria Fuentes respectfully showeth, that on the 12th day of June, 1843, Manuel Micheltorena, brigadier general of the Mexican army, adjutant general of the principal staff of the same, governor and commanding general of the department of the Californias, and who, by law, was then and there authorized to grant lands in California, granted to your petitioner in fee and in due form of law a certain tract of land situate in the present county of Santa Clara, in this State, and which is described in the said grant as the tract known by the name of the Potrero, and is situate within the limits of the el mission of San José, and bounded on the north by the place called the Agua Caliente, on the south by that called "Pala," on the west by the peak of the hill of the ranchos of Don Fulgeria Higueria and Don Chrysostom Galinda, and on the east by the adjoining mountains.

Your petitioner further showeth, that the said grant was for eleven leagues, for large cattle, (sitios de ganado mayor,) and that the boundaries thereof are accurate and well defined, and the objects for which it calls are notorious and well known.

A copy of the said original grant in the Spanish language is herewith filed as an exhibit, marked "Exhibit A," and a translation marked "Exhibit B," both of which are prayed to be taken as parts of this petition.

Your petitioner further showeth, that the said grant was issued and delivered to your petitioner in due form of law, and that the said Micheltorena, as the governor of Upper California, at the date of said grant, had full power and authority, under the laws, ordinances, and usages of the Mexican government, to grant lands in fee in the said department of Upper California, and that the said grant was duly recorded at the time it was issued; but your peti-

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tioner is informed and believes that the books of record or archives, containing the grants, or a large number of them, made in the year 1843, by the said Micheltorena, were destroyed by fire in the city of San Francisco, in the year 1849; at all events they are not to be found amongst the archives in the office of the surveyor general for California, and your petitioner is informed and believes that the copy of said grant, and the expediente or diagram of the said land, was burnt and destroyed at the same time, so that the same cannot now be produced.

Your petitioner further showeth, that the said grant was duly approved by the territorial legislature, and was in all respects formally completed according to law; but the records of the said legislature for the year 1843 were in like manner destroyed by fire, at the same time with the record of the grant before referred to, so that your petitioner can produce no record evidence of its approval by the said legislature.

So far as your petitioner knows, there is no conflicting claim or title to any part of said land; wherefore, your petitioner claims that he is entitled to said land in fee simple, and prays that he be confirmed in his title by a decree of your honorable board, and for such other relief in the premises as he may be entitled to.

CROCKET & BAKER,
*Att'ys for Petitioner.*

Filed in office December 21st, 1852.
(Signed) GEO. FISHER, *Sec'y.*

*Deposition of Ramon de Zaldo.*

SAN FRANCISCO, *December* 28, 1852.

On this day, before Commissioner Harry J. Thornton, came Ramon de Zaldo, a witness in behalf of the claimant, José Maria Fuentes, petition No. 496, and was duly sworn, his evidence being interpreted by the secretary.

*Questions by Claimant.*

Question 1st. What is your name, age, place of residence, and what is your employment so far as respects the public archives of the former governments of California?

Answer. My name is Raymond de Zaldo; age 47; residence San Francisco. I am, and have been for some time, chief clerk and interpreter of the government to arrange and classify the Spanish and Mexican archives in the custody of the surveyor general of California.

Question 2d. What do you know with regard to the record or book of titles of the Mexican government for the year 1843? Have you or not made diligent search among the public archives above referred to, for said record or book of titles? and if so, state the result of such search.

Answer. I have learned from a correspondence in the office, that such a book was once in the possession of J. L. Folsom, United States quartermaster at one time, and in the same way that it was destroyed with his other papers by the *mass* fire in San Francisco, of 1851. I know of my own knowledge that there is wanting in the office the record or book of titles of the said year 1843; though I know not of my own personal knowledge, &c., that it ever existed.

RAMON DE ZALDO.

U. S. law agent present.

Sworn to and subscribed before me, this 28th of December, 1852.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office December 28th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

*Deposition of Jose Abrego.*

SAN FRANCISCO, *December 28th*, 1852.

On this day, before Commissioner Harry J. Thornton, came José Abrego, a witness on behalf of the claimant, José Maria Fuentes, petition No. 496, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

1st question by claimant. What is your name, age, and place of residence?

Answer. My name is José Abrego; I am forty years of age; and reside at the town of Monterey, in the State of California.

2d question by claimant. Were you acquainted with General Manuel Micheltorena, formerly governor of Upper California? If yea, state when and where you knew him, and whether or not you ever saw him write, or are familiar with his handwriting?

Answer. I was acquainted with General Manuel Micheltorena, and, as well as I can remember, knew him in the years 1842 and 1843, at Monterey, then the capital of Upper California. I have frequently seen him, the said Micheltorena, write, and am well acquainted with his handwriting.

3d question by claimant. Please examine the document now shown to you marked "Exhibit No. 1," and which is to be attached to your deposition, and state whether or not you recognise the handwriting of the signature to the said document; and if so, in whose handwriting is it?

Answer. I have examined the signature to said document, and know it to be the genuine signature of Governor Manuel Micheltorena.

JOSÉ ABREGO.

The U. S. law agent present.

Sworn to and subscribed before me, this 28th of December, 1852.
(Signed) HARRY J. THORNTON, *Com'r.*

Filed in office December 28th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

*Deposition of Jos. L. Folsom.*

SAN FRANCISCO, *December* 29, 1852.

On this day, before Commissioner Harry J. Thornton, came Joseph L. Folsom, a witness in behalf of the claimant, José Maria Fuentes, petition No. 496, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

1st question by claimant. What is your name, age, and place of residence?

Answer. My name is Joseph L. Folsom; my age 36; and my place of residence the city of San Francisco.

2d question by claimant. Have you any knowledge of the book of records, containing the grants of land by the governors of Upper California, for the year 1843? If yea, state what became of said book.

Answer. A book of records, containing grants of land in Upper California, was put into my possession in the spring of 1851, to be used as evidence in the suit of Leese and Vallijo vs. Clark, then pending in the superior court of the city of San Francisco. Said book was in the Spanish language, and came from the archives of the Mexican government of California, then in possession of the commanding general at Benecia, and was delivered to me, as an officer of the army, for safe-keeping. After the book was used in evidence it was returned to me, and was deposited in my office in the city of San Francisco, and whilst there the great fire of the 3d and 4th of May, 1851, occurred, by which my office and its contents, including the said book, were destroyed. I am not positive as to the date of the grants contained in said book, but from my best recollection my impression is that they were for the years 1843 and 1844.

J. L. FOLSOM.

I acknowledge notice and have no questions to ask.
ROBERT GREENHOW,
*Asst. Law Agent of U. S.*

Sworn to and subscribed before me, this 29th of December, 1852.
HARRY J. THORNTON,
*Com'r, &c.*

Filed in office December 29th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

*Deposition of Manuel Castro.*

SAN FRANCISCO, *February 25th*, 1853.

On this day, before Commissioner Hiland Hall, came Manuel Castro, a witness in behalf of the claimant, José Maria Fuentes, petition No. 496, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Manuel Castro; my age is thirty-one years; and I reside in San Tomas, in Lower California; I am a captain in the Mexican army with the brevet rank of colonel, and the second in command on the frontier of Lower California.

An instrument in writing is now shown me, purporting to be a grant to José Maria Fuentes, dated June 12, 1843, and is attached to the deposition of José Abrego, heretofore taken in this case, and marked H. J. T. No. 1. I know the paper. It is in my handwriting. I was at the time secretary in the prefect's office in Monterey, and being on terms of friendship with Secretary Jimeno and with Arce, a clerk in his office, I frequently assisted them in their official duties at their request, and in that manner I wrote the body of this grant. It was written in June, 1843, at the time of its date.

I know the signature of Manuel Micheltorena, and the signature on the paper purporting to be his appears like his, and the signature of Jimeno on said paper also appears like his.

MAN'L CASTRO.

Sworn and subscribed before me.

HILAND HALL,
*Commissioner.*

Filed in office February 25th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

*Doc. H. J. T. No.* 1, *annexed to the Depo. of Jose Abrego, taken before Com'r H. J. Thornton.*

Sello Primero—Ocho Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el departamento de las Californias para el año de mil ochocientos cuarenta y tres.

MANUEL CASTAÑARES.

MICHELTORENA.

[SELLO.]

El ciud'no Manuel Micheltorena, G'ral de Brigada del Ejercito Mejicano, Ayudante G'ral de la Plana Mayor del mismo, Gobernador, Comandante G'ral del Departam'to de Californias.

Por cuanto D'n José M'a Fuentes Mejicano por nacimiento ha

pretendido para su benificio personal y el de su familia el terreno conocido con el nombre de Febrero que se halla en la comprehencion de la ex. mision de San José colindante por el norte con el parage de la Agua Caliente, por el sur con el de pala, por el oeste con la cumbre de la loma de las ranchos de D'n Fulgencio Higuera y D'n Crisostomo Galindo y por el este con la sierra inmediata; practicados previamente las diligencias y averiguaciones concernientes segun lo dispuesto por las leyes y reglamentos; usando de las facultades con que me hallo investido á nombre de la nacion Mejicana he venido en concederle el mencionado terreno bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutara libre y esclusivamente, destinandolo al uso o cultivo que mas le acomode.

2a. Solicitara del juez respectivo que le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondran pro honeras ó algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de once sitios de ganado mayor poco mas o menos segun demuestra el diseño respectivo que queda unido al espediente.

El juez que diere la posesion lo hara medir conforme a ordenanza quedando el sobrante que resulte á la nacion pa. los usos convenientes.

En consecuencia mando que firma y valedero el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey de la Alta California á doce de Junio de mil ochocientos cuarenta y tres.

MAN'L JIMENO, *S'rio.* MAN'L MICHELT'A.

Se tome razon de este titulo en el libro respectivo qe obra en el archivo de esta s'rio.

Monterey, Junio 13, de 1843. JIMENO.

Lleva todos mis amplios poderes y personalidad el s'or segun pa. gestionar lo conveniente y tomar posesion de este titulo y toda la plenitud de los derechos q'e yo personalmente pudiera tener y p'a convenencia lo formo en Mejico á veinte y dos dias del mes de Diciembre de mil ochocientos cuarenta y ocho.

JOSÉ MA. FUENTES.

Los infrascritos escribanos.

Certificamos y damos fé que la forma que autoriza el titulo de los terrenos concedidos a D'n José Maria Fuentes es del Señor General Don Manuel Micheltorena que en la

Sello Cuatro { Ano de mil ochocientos cuarenta [Seal.] y dos y cincuenta y tres. } un Real.

epoca á que se refiere el titulo espresado, era gobernador y comandante g'ral de Californias y cuanto con ella autoriza se le ha dado y da

enterafée y credito judicial y extra judicialmente y para que conste ponemos la presente sellada con el de nuestro nacional colegio en la ciudad de Mexico a diez de Mayo de mil ochocientos cuarenta y dos.

CASUN'E LANDGRAVE.

FAMO VELLA,
MANUEL DE MADARIAGA.

[SELLO.]

El infrascrito oficial mayor 1o del ministerio de relaciones interiores y exteriores certifica ser autentical las firmas que anteceden de los escribanos Vella, Madairaga y Landgrave, a las q'e seder entua fé y credito.

Derechos 4 p'o Mexico, 12 de 1852.

JOSÉ MARIA VICTOR MONASTERIOS.

LEGATION OF THE U. STATES OF AMERICA AT MEXICO.

I, Robert P. Letcher, Envoy Extr. and Minister Plno. of the U. States of America near the government of Mexico, do hereby certify that the signature of José Maria Ortez Monasterio, attached to the preceding document, is in his own proper handwriting, to me well known; that he was at the time of signing the same, and is now, chief clerk of the department of State for foreign affairs of the Mexican government, and by law authorized and required to certify to public documents, and all acts signed by him as such are deserving of full faith and credit.

In testimony whereof, I hereunto subscribe my name and affix the seal of this legation at Mexico, this 12th day of May, A. D. 1852.

[SEAL.]

R. P. LETCHER.

WM. RICH, *Sec'y Legation.*

[SEAL.]

El infrascrito, Ministro de Relaciones Interiores y Exteriores de la Republica Mejicana.

Certifico: que cuando en el año de 1842 se nombro al S'r Gral. D. José Manuel Micheltorena, gobernador y comandante gral., inspector del departamento de Californias, ademas de las atribuciones que como tal le demarcaban la ordenanza y las leyes entonces vigentes se le confirieron todas las facultades que podia delegarle el gob'no supremo investido en aquella en aquella epoca con las omnimodas de las Bases de Tabaya para que las ejerciera dicho gral. en el referido departamento en cuantos vamos pudieran contribuir á su dicha, y entre ellos en el de colonizacion, en cuya virtud el precitado S'r Micheltorena hezo conceciones de tierras a diversos particulares.

Y para que conste firmo el presente en Mexico a 31 de Marzo de 1852.

Por ocupacion del E. S. Ministro.

JOSÉ MARIA ORTEZ MONASTERIO.

LEGATION OF THE UNITED STATES AT MEXICO.

I, Robert P. Letcher, Envoy Extr. and Minister Plno. of the United States of America near the government of Mexico, do hereby certify, that the signature of José Maria Ortiz Monasterios, attached to the preceding document, is in his own handwriting, to me well known; that he was at the time of signing the same, and is now, chief clerk of the department of State for foreign affairs of the Mexican government, and by law authorized and required to certify to public documents, and all acts signed by him as such are deserving of full faith and credit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of this legation at the city of Mexico this [SEAL.] 10th day of May, A. D. 1852.

Attest: R. P. LETCHER.

WM. RICH, *Secr'y Legation.*

Filed in office, December 28th, 1852.

GEO. FISHER, *Sec'y.*

"B."—*Translation of Grant.*

First Seal—Eight Dollars.

Used provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-three.

MANUEL CASTAÑARES.

MICHELTORENA.

{ Maritima de Monterey Aduana. }

The citizen Manuel Micheltorena, Brigadier General of the Mexican army, Adjutant General of the principal staff of the same, Governor Commanding of the Department of the Californias.

Inasmuch as Don José Maria Fuentes, a Mexican by birth, has solicited, for his own personal benefit and that of his family, the tract of land known by the name of the Potrero, which is situated within the limits of the ex-mission of San José, bounded on the north by the locality called Warm Springs (Agua Caliente,) on the south by that called "Pala," on the west by the peak of the hill of the ranchos of Don Fulgencio Higuera and Don Chrysostom Galindo, and on the east by the adjoining mountain, (sierra,) having first taken the necessary steps and the precautionary proofs required by the laws and regulations, exercising the powers with which I find myself clothed, in the name of the Mexican nation, I have now granted him the aforesaid tract of land upon the following conditions:

1st. He shall enclose it without prejudice to the cross-ways, roads and uses; he shall have the free and exclusive enjoyment of it, and apply it to such use and culture as may best suit his views.

2d. He shall apply to the proper judge, that he may give him juridical possession of the same by virtue of this act, by whom the boundaries shall be marked out, on the limits of which landmarks shall be placed, and fruit trees or forest trees of some utility shall be planted.

3d. The tract of land hereby donated contains eleven leagues for large cattle, more or less, as designated by the corresponding map which is attached to the espediente. The judge who shall give possession of it shall have it surveyed according to the ordinance, the overplus remaining belonging to the nation for its proper uses.

Wherefore I decree, that the present title shall be held firm and valid; shall be recorded in the proper book and delivered to the party interested for his security and ulterior ends.

Given at Monterey, in Alta California, this 12th day of June, 1843.

MANUEL MICHELTORENA.

MANUEL JIMENO, *Secretary.*

This title was recorded in the proper book which is used in the archives of the office of the secretary of this department.

Monterey, June 13, 1843.

JIMENO.

All my full

Filed in office December 21st, 1852.

(Signed) GEO. FISHER, *Sec'y.*

*Opinion by Com'r Farwell.*

JOSÉ MARIA FUENTES vs. THE UNITED STATES. } Claim for a place called Potrero, situate in the county of Santa Clara, and containing eleven square leagues.

This claim is based upon a grant purporting to have been issued by Governor Micheltorena on the 12th day of June, 1843, to the present claimant. The claimant has offered no proof of survey or measurement of the land so as to define its boundaries; nor has he offered any proof whatever of the performance of any of the conditions of the grant: We are of opinion that the claim is not a valid one, and a decree will be entered accordingly.

Rejected.

Filed in office November 21, 1852.

(Signed) GEO. FISHER, *Sec'y.*

*Decree.*

JOSÉ MARIA FUENTES vs. THE UNITED STATES. }

On hearing the proofs and allegations in this case, it is ad-

judged by the board that the claim is invalid, and it is hereby ordered that the same be rejected.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
*Commissioners.*

Filed in office November 21st, 1852.
(Signed) GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the U. S. district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

*Secretary's Certificate.*

OFFICE OF THE BOARD OF COMMISSIONERS
*To ascertain and settle private land claims in the State of California.*

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty pages, numbered from one to twenty, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 496 on the docket of the said board, wherein José Maria Fuentes is the claimant against the United States, for the place known by the name of Potrero.

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, [SEAL.] California, this twenty-fifth day of May, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed June 2d, 1855.
JOHN A. MONROE, *Clerk.*

*Notice of Appeal.*

Clerk's Office of the District Court of the United States for the northern district of California.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America, approved on the 3d of March, 1851, entitled "An act to ascertain and settle the private

land claims in the State of California," did, on the 21st day of November, 1852, by their decision of that date, decide against the claim presented by the undersigned to the said commissioners—which claim is No. 496 on the docket of claims before said board, and is for land lying in the said northern district—and the said claimant being desirous that the said district court should review the said decision, now hereby files this notice in the said clerk's office of his intention to prosecute an appeal, as is provided by the 12th section of "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30th of June, 1853, and for other purposes;" which said act was approved on the 31st of August, 1852.

July 12th, 1855.

JOSÉ M. FUENTES.
By THORNTON, WILLIAMS & THORNTON,
*Of Counsel for Claimant.*

To J. A. MONROE, *Clerk of said Court.*

Endorsed: Filed August 3d, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

*Petition.*

To the honorable District Court of the United States in and for the northern district of California:

JOSÉ MARIA FUENTES, Appellant,
vs.
THE UNITED STATES, Appellee.

The petition of the said José Maria Fuentes respectfully represents, that this is an application for a review of the decision of the board of land commissioners to ascertain and settle private land claims in California, whereby the claim of the said appellant was rejected, as appears by the transcript of the record filed in the clerk's office of this court. Said transcript was so filed on the 2d day of June, 1855; notice of intention to prosecute appeal was duly filed according to law on the 3d day of August, 1855. The land described in said transcript, and of which confirmation to the said appellant is here sought, lies in the northern judicial district of California, and within the jurisdiction of this court. The said appellant avers that his title to the said land is valid, and prays this hon. court to review and reverse the decision of the said board, and decree the validity of his said claim and title to the said land.

JOSÉ MARIA FUENTES,
By his Counsel.

Endorsed: Filed February 7th, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

*Answer.*

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellees, ads. JOSÉ MARIA FUENTES, Appellant.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellant, and pray that the decision of the board of commissioners be affirmed, and that the said title be decreed to be invalid.

A. GLASSEL, *Ast. U. S. Att'y.*

Endorsed: Filed February 7th, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

*Deposition of Jose Abrego.*

United States District Court northern district of California.

THE UNITED STATES vs. JOSÉ MARIA FUENTES.

SAN FRANCISCO, *October* 15, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came José Abrego, a witness produced on behalf of the claimant, in case No. 209, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 496 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, J. J. Williams of counsel for cl'ts, and the U. S. dist. att'y by A. Glassell, esq.

Question 1st by . What is your name, age, and place of residence?

Answer. José Abrego; am 43 years of age; and I reside in Monterey, Cal.

Question 2d. Are you acquainted with José Maria Fuentes, the claimant in this case? if yea, state whether he was a minor or of full age at the change of governments—that is to say, on the 7th day of July, 1846.

Answer. I am acquainted with José Maria Fuentes, the claimant, and his family, and on the 7th of July, 1846, I know he was not of age, but a minor.

*Cross-examined by U. S. Attorney.*

Have you any interest in the event of this suit?

Answer. None whatever.

JOSÉ ABREGO.

Sworn to and subscribed before me, this 15th day of October, 1855.

JOHN A. MONROE,
*U. S. Commissioner.*

Endorsed: Filed October 15th, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

*Opinion delivered by the Hon'ble M. H. McAllister, Judge of the Circuit Court.*

JOSÉ MARIA FUENTES
vs.
THE UNITED STATES.

The claim in this case was rejected upon the ground that there was no proof of any survey or measurement of the land, or of any performance whatever of the conditions of the grant.

In the language of one of claimant's attorneys, "there is no proof in the cause that the claimant ever took possession of the land, or performed the conditions. The grant on which the claim is vested bears date 12th June, 1843. No testimony has been adduced to show that claimant ever went near or on the land, or had ever seen it. There is no evidence of any kind of any attempt to take possession of the land, or fulfil any one of the conditions annexed to the grant, nor to afford any explanation why such possession was not taken, or such effort made.

No case, from the absence of all such testimony, has presented itself to our consideration which proves more clearly than the present, "that the party had abandoned his claim before the Mexican power had ceased to exist, and was now endeavoring to resume it from the enhanced value under the government U. S."

And, if this be the fact, although it may be admitted that until denouncement of the land the right of the party would not have been forfeited, still, when he comes into a court acting upon the principles of equity, and asks for its interposition in his behalf, good faith on his part is *encential* to authorize such interposition; such seems to be the view of the Supreme Court in the Frémont case.

The counsel for claimant has rested this claim on another ground, and with a view to evade the objection of a total failure on the part of the claimant to attempt to comply with either or any of the conditions of the grant, or even to take possession of the land, contend that claimant was a minor in July, 1846, when a change of government took place.

A witness was examined since the appeal was taken, and the following question propounded to him, viz: "Are you acquainted with José Maria Fuentes, the claimant in this case? if yea, state whether he was a minor or of full age at the change of govern-

ments—that is to say, on the 7th July, 1846." To this the witness replied, "I know he was not of age, but a minor."

It is contended, therefore, that being a minor, no abandonment will be presumed against him; or if proved, enforced against him.

The testimony establishing the minority of claimant at the time inquired of is very vague, and an objection might have been well taken to the form of the interrogatory which elicited the fact of claimant's minority. Considering it, however, to have been satisfactorily established, we do not consider that the legal consequences contended for by claimant's counsel would result from the fact.

The grant, the genuineness of which has been proved, was issued on the 12th day of June, 1843. This grant was issued professedly in conformity to the colonization laws and regulations of Mexico, to the grantee, for his personal benefit and that of his family. It has the conditions attached to such grants, that are usually annexed to Mexican grants, and as such, was accepted by the grantee. It is fair to infer from the face of the grant (there being no evidence of any petition having been filed) that the grantee represented himself as belonging to that class of citizens who were entitled to grants under the colonization laws by reason of and ability to fulfil the policy of those laws imbodied in the conditions annexed to colonization grants. It is reasonable so to infer, because in the grant and conditions he is treated as such. The grant is made similar in every respect to other grants, and has annexed all the usual conditions. If the government were imposed upon, a court of equity will not listen to the suggestion that the grantee who thus deceived the government may profit by proving he was a minor, and therefore not to be bound by the conditions of the grant.

In the 7th subdivision of 2d section in Domat's Civil Law it is laid down: "If a minor has given out that he is of age, and by producing a false certificate of the registering of his christening, or by some other way, has made people believe that he is a major, he cannot be relieved against those acts into which he shall have engaged any one by this surprise."

If, therefore, the grant, with conditions, was delivered to grantee, and accepted by him, with the belief on the part of the government that it was dealing with one upon whom a compliance with the conditions of the grant were be enforced, and such belief was induced by the conduct of the grantee, the grant was fraudulent, and no court of equity should confirm it.

But, independently of this consideration, there is another view of this case, which in our opinion is conclusive against the claimant.

It is true, as contended for by the counsel for claimant, minors are carefully protected under both the civil and common law; that prescription will not run against a minor; that contracts made by

them, and conveyances of real estate, are in many instances void, and in others voidable. But in neither code has the protection afforded to infants been converted from what it is intended to be, a shield against others, into a weapon, to be wielded by them in fraud of others. Neither code permits a minor to hold an estate without paying the consideration which was stipulated to be paid; nor have we been able to find a case where a minor who has accepted an estate upon conditions has been permitted to hold that estate free from stipulated conditions, and the performance of them during minority.

The colonization grants under the Mexican law were issued upon a consideration and conditions in which the public was interested, and the payment of that consideration by the fulfilment of the conditions was essential to the interest of the grantor.

In Griffin vs. Griffin, 1 Soh. Lef. 35, the principle is affirmed, that "an infant cannot avail himself of his infancy to excuse the non-assertion of his right under an executory agreement made with his ancestor, where the immediate performance of his part of the contract is essential to the interest of the other contracting parties; where, for instance, there is an executory agreement to grant a lease on the one part, and a covenant to pay money on the other, and the tenant dies, leaving an infant heir, if this contract is to continue executory during the whole minority, it will not be giving to the landlord the benefit of that in consideration of which he stipulated to grant the lease. Ibid. 353.

Coke states the doctrine thus (1 Inst. 2,406): Regularly no laches shall be accounted to infants for non-entry or claim to avoid descents, yet laches shall be accounted to them for non-performance of a condition annexed to the State of the land, for the laches of an infant for not performing a condition annexed to a State, either made to an ancestor or himself, shall bar him of the right of the land forever.

In Cary vs. Bestie, 2 Vernon, 343, the lord chancellor said, it is true, infants are always favored. But the court never pretended to change the nature of infants' estate, or to make that absolute which was defeasible. Where an estate is given to an infant upon condition, such act as an infant can perform must be done by him, and infancy in said case is no excuse.

An infant is bound by conditions annexed to the estate at common law, because, transit cum onere oval; and therefore, if the infant will have the estate, he must observe the condition upon which it was granted. Bac. Al., vol. 5, p. 112. Lastly, an infant is bound by all conditions, &c., in an original conveyance, whether becomes to the estate by grant or descent. Ibid. Foregoing authorities establish that infancy is no protection in this case from the consequences attendant upon the conduct of grantee; and that conduct having evidenced not only abandonment, but not even an

intention to assert any right under the grant until a period of time, which, by its effect, manifests the intention to claim in consequence of the enhanced value of the land, the decree of the board rejecting this claim must be affirmed. A decree must be entered accordingly.

*Decree Rejecting Claim.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable M. Hall McAllister, circuit judge; and the Honorable Ogden Hoffman, district judge.

THE UNITED STATES ads. JOSÉ MARIA FUENTES. } D. C. 209.—L. C. 496.

This cause came on to be heard on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3d, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded, and it appearing to the court that the said transcript has been duly filed according to law, and the cause having regularly come to a hearing, it is by the court hereby ordered, adjudged and decreed that the said decision be, and the same is hereby, in all things affirmed; and it is likewise ordered, adjudged and decreed, that the claim of the appellant is invalid, and that the same be, and is hereby, rejected.

M. HALL McALLISTER, *Judge, &c.*

Endorsed: Filed August 24th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

*Order Granting Appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 18th day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. JOSÉ MARIA FUENTES. } No. 209 D. C.—496 L. C.

In this case, on the application of the attorneys for claimant, made in open court, it is ordered by the court that an appeal in behalf of the claimant from the final decision of this court, rendered

in said cause at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence and depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay; and that the claimants give security in the sum of two hundred dollars for costs in the district and supreme courts, in case the judgment of the said district shall be affirmed.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed September 18th, 1857.

JOHN A. MONROE, *Clerk.*

*Bond on Appeal.*

Supreme Court of the United States.

THE UNITED STATES vs. JOSÉ MARIA FUENTES. } On Appeal.—No. 209 D. C.—No. 496 L. C.

Know all men by these presents, that we, Isaac Hartman and Samuel G. Beatty, jr., and J. B. Crockett, are held and firmly bound unto the above named the United States of America, in the sum of two hundred (200) dollars, to be paid to the said the United States of America; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated the 30th day of September, A. D. 1857.

Whereas the above named José Maria Fuentes hath prosecuted an appeal to the Supreme Court of the United States from the final judgment rendered in the said cause by the district court of the United States for the northern district of California:

Now, therefore, the conditions of this obligation is such, that if the above named José Maria Fuentes shall prosecute the said appeal to effect, and answer all costs in the supreme and district courts if he shall fail to make good his appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ISAAC HARTMAN, [SEAL.]
SAM'L G. BEATTY, JR., [SEAL.]
J. B. CROCKETT, [SEAL.]

Signed and sealed in presence of—
J. M. BLOOD.

Approved this 19th day of November, 1857.

O. HOFFMAN, *Judge.*

Endorsed: Filed November 19th, 1857.

JOHN A. MONROE, *Clerk.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to twenty-eight inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinions and decree filed in this office in the case entitled José Maria Fuentes vs. The United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court the nineteenth day of November, A. D. 1857, and of the independence of the United States of America the eighty-second.

[SEAL.]

JOHN A. MONROE,
*Clerk U. S. Dist. Court N. D. of Cal'a.*

Filed 15th December, 1857.